

IN THE SUPREME COURT OF THE STATE OF DELAWARE

MARCUS JOHNSON,	§	
	§	No. 548, 2005
	§	
Defendant Below,	§	Court Below—Superior Court
Appellant,	§	of the State of Delaware, in
	§	and for New Castle County
v.	§	
	§	
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	
Appellee.	§	Cr. ID No. 0204002388

Submitted: November 21, 2005

Decided: January 24, 2006

Before **STEELE**, Chief Justice, **HOLLAND** and **BERGER**, Justices.

ORDER

This 24th day of January 2006, upon consideration of the notice of appeal filed by the appellant, Marcus Johnson, the Clerk's notice to show cause, and Johnson's response to the notice to show cause, it appears to the Court that:

(1) Marcus Johnson is an inmate at a Delaware correctional facility. On November 7, 2005, the Court received Johnson's notice of appeal from the Superior Court's order of September 15, 2005, that denied his motion for modification of sentence. Because Johnson's notice of appeal appeared to be untimely filed, the Clerk issued a notice pursuant to Supreme Court Rule

29(b) that directed Johnson to show cause why the appeal should not be dismissed for his failure to file the notice of appeal within thirty days of the Superior Court's order of September 15, 2005.¹

(2) In his response to the notice to show cause, Johnson explains that he was unable to prepare and file a notice of appeal within thirty days because he had to wait several weeks before he could gain access to the prison law library. Moreover, according to Johnson, before he could file the notice of appeal, he had to send a copy of the appeal to the prison business office to obtain the balance on his inmate account.

(3) Under Delaware law and procedure, a notice of appeal must be received by the office of the Clerk of this Court within the applicable time period.² Unless an appellant can demonstrate that the failure to file a timely notice of appeal is attributable to court-related personnel, the appellant's untimely appeal cannot be considered.³

(4) In this case, the logistical difficulties described by Johnson do not excuse the jurisdictional defect that was created when he filed the notice of appeal in an untimely manner.⁴ The record does not reflect that Johnson's

¹Supr. Ct. R. 6(a)(iii).

²Supr. Ct. R. 6(a), 10(a); *Carr v. State*, 554 A.2d 778, 779 (Del. 1989).

³*Bey v. State*, 402 A.2d 362, 363 (Del. 1979).

⁴*See, e.g., Luby v. State*, 1994 WL 416510 (Del. Supr.) (stating that "[t]he only legal material which is arguably vital to the filing of a notice of appeal is the decision from which the appeal is taken.").

failure to file the notice of appeal within thirty days is attributable to court-related personnel. Consequently, this case does not fall within the exception to the general rule that mandates the timely filing of a notice of appeal.

NOW, THEREFORE, IT IS ORDERED, pursuant to Supreme Court Rule 29(b), that the appeal is DISMISSED.

BY THE COURT:

/s/ Carolyn Berger
Justice